

GAHC010261502023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6954/2023

ABDUL WAHAB
S/O LT. ASMAT ALI R/O VILL. KATAHBARI NEAR NO 2 MASJID P.O. AND P.S.
GORCHUK DIST. KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
TRANSPORT DEPARTMENT , DISPUR, GUWAHATI, PIN-781006

2:THE SECRETARY
TO THE GOVT OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI
PIN-781006

3:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI
PIN-781006

4:THE DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI-07

5:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION

ASSAM
ULUBARI
GUWAHATI-07

6:THE DEPARTMENTAL TENDER COMMITTEE
REP. BY THE DIRECTOR
IWT
ASSAM
ULUBARI
GUWAHATI-07

7:SARAT HAZARIKA
R/O VILL.- UPAR KURUA (PART)
P.S.- SIPAJHAR
SUB-DIVISION MANGALDOI
DIST.- DARRANG
ASSAM.

8:GIYASUDDIN
S/O MUCHA SEIKH R/O VILL. NO. 1 CHOULKHOWA P.O. DHALPUR DIST
DARANG PIN 78414

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : SC, IWT

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

29.02.2024

1. Heard Mr. N. Borah, learned counsel for the petitioner. Also heard Ms. M.D. Borah, learned Standing Counsel, Transport Department. No one appears for the respondent nos.7 & 8.

2. This Court, vide order dated 12.02.2024, had stated that service of notices upon the respondent nos.7 & 8 have been completed.

3. The petitioner's case is that the settlement of the ferry service viz Chandrapur – Kirakara Ferry Service, in pursuant to the re-tender Notice dated 22.05.2023, has to be settled with the petitioner in pursuance to the judgment and order dated 11.10.2023 passed in WP(C) No.4760/2023, as he is the lone surviving valid bidder.

4. The petitioner's case is that the respondent no.5 had initially published tender notice dated 28.06.2022 inviting tenders for leasing out various Ferry Services, including the Chandrapur – Kirakara Ferry Service, (the 'Ferry Service' in short), which the present writ petitioner participated in.

5. Suffice to say that the said tender notice dated 28.06.2022 was cancelled and a re-tender notice dated 22.05.2023 was issued, wherein the base assessment value for the Ferry Service was fixed at Rs.4,73,700/-. In response to the re-tender notice, 4 bids were received including the bid of the petitioner. After evaluation of the bids and scrutiny of the documents, the Tender Committee, in its meeting held on 17.06.2023, found the bid of the petitioner to be the only responsive valid bid at his offered bid value of Rs.6,50,500/-. The bid value of the respondent no.7 which was Rs.18,50,562/- and the bid value of the respondent no.8 at Rs.9,50,650/- were found not qualified/defective, in view of the fact that documents had not been submitted by them, as required in the re-tender notice. The Tender Committee which considered bids in pursuance to the re-tender notice dated 22.05.2023 found that the respondent no.7 had failed to submit proper Land Valuation Certificate and Financial Soundness Certificate. On the other hand, the respondent no.8 had failed to submit

Experience Certificate as per the NIT. The 4th tenderer, one Jamat Ali, had withdrawn his tender, leaving only the petitioner as the sole valid tenderer in the re-tender notice dated 22.05.2023. Instead of settling the Ferry Service with the petitioner, the State respondents cancelled the re-tender notice dated 22.05.2023 and issued a 3rd tender notice dated 05.08.2023.

6. Assailing the 3rd tender notice dated 05.08.2023, the petitioner filed WP(C) No.4760/2023. This Court disposed of WP(C) No.4760/2023, vide judgment and order dated 11.10.2023, by holding that though the Tendering Authority had the right to refuse the highest bid or any other bid submitted by the tenderers, the decision not to proceed further with the re-tender notice dated 22.05.2023, only on the ground that there remained only one responsive bidder in the fray, was to be found to be arbitrary and discriminatory in nature. This Court, thereafter set aside the 3rd tender notice dated 05.08.2023 and directed the respondent authorities to bring the re-tender notice dated 22.05.2023 to its logical conclusion, by revisiting it from the stage of evaluation of the technical bids of the participant bidders.

7. This Court further held in WP(C) 4760/2023 that the Tender Committee, while revisiting the matter, should also take a decision as regards the responsiveness or unresponsiveness of the bid of the respondent no.7 in respect of the Land Valuation Certificate, by strictly adhering to the terms and conditions laid down in the re-tender notice dated 22.05.2023 and the clarifications stated to have been received.

8. Subsequent to the judgment and order dated 11.10.2023 passed in WP(C) No. 4760/2022, the Tender Committee held a meeting on 31.10.2023 with regard to the re-tender notice dated 22.05.2023, to consider the bids of the tenderers from the stage of evaluation of their Technical Bids. The Tender Committee thereafter reviewed its earlier decision taken in its meeting minutes dated 17.06.2023, pursuant to the re-tender notice dated 22.05.2023 by stating as follows in its meeting minutes dated 31.10.2023 :-

*“As per the Comparative Statement it is found that 4(four) bidders have participated in the **re-tendering** process for settlement of Chandrapur-Kirakara Ferry Service for the remaining period of the financial year 2022-24. All the bidders have deposited their required amount of earnest money along with the tender. Out of four bidders, 1(one) bidder Jamat Ali has withdrawn his tender. The **Tender committee decides to forfeit his earnest money deposited for Chandrapur-Kirakara Ferry Service.** The estimated value of the ferry service is Rs.4,73,700.00 per year.*

The name of the bidders and documents submitted are mentioned below :-

<u>Name of bidders</u>	<u>Documents Submitted/Not submitted</u>
a) Abdul Wahab (P)	All documents submitted as per NIT.
b) Giasuddin (R.8)	All documents submitted as per NIT.
c) Jamat Ali	Withdrawn his tender.
d) Sarat Hazarika (R.7)	All documents submitted as per NIT.

Decision: *Tender committee decides to accept the tenders of Abdul Wahab, Giasuddin and Sarat Hazarika and reject the tender of Jamat Ali.”*

9. As per the meeting minutes of the Tender Committee held on 31.10.2022 the bids of the petitioner, respondent no.7 and respondent no.8 have been found to be responsive. Being aggrieved with the same, the petitioner has approached this Court for setting aside the meeting minutes of the Tender

Committee held on 31.10.2023 in respect of the re-tender notice dated 22.05.2023, in so far as it relates to the respondent Nos. 7 and 8.

10. The petitioner's counsel submits that the Technical Bids of the respondent nos.7 & 8 having been found to be unresponsive and defective due to non-submission of essential documents which were mandatory in nature, in terms of Clause 10(b) of the re-tender notice dated 22.05.2023, the subsequent Tender Committee meeting minutes dated 31.10.2023 could not have taken a different view in respect of the same documents. He accordingly prays that as the petitioner's tender is the only remaining responsive valid tender, in pursuance to the re-tender notice dated 22.05.2023, the Ferry Service should be settled with the petitioner as per his bid amount.

11. Ms. M.D. Borah, learned Standing Counsel for the Transport Department, on the other hand submits that this Court in WP(C) No.4760/2023 had given liberty to the Tender Committee to re-visit the matter at the Technical Bid Evaluation stage and as such, the Tender Committee could review the entire Technical Bid Evaluation made earlier, in respect of the technical bids of the tenderers. She submits that the issue of the respondent no.7 having failed to submit a proper Land Valuation Certificate, had been clarified by the concerned Deputy Commissioner. As the concerned Deputy Commissioner had stated that it was a proper Land Valuation Certificate, the earlier stand taken by the Bid Valuation Committee in its meeting minutes dated 17.06.2023 was reviewed and found to be incorrect.

12. She submits that on considering the "Financial Soundness Certificate" issued by a nationalised bank to the respondent no.7, it was found that the respondent no.7 had submitted a proper "Financial Soundness Certificate".

13. Ms. M.D. Borah also submits that the respondent no.8 had submitted an Experience Certificate as per the re-tender notice dated 22.05.2023. As the petitioner had quoted Rs.6,50,500/-, respondent no.7 quoted Rs.18,50,562/- and the respondent no.8 quoted Rs.9,50,650/-, the Tender Committee had recommended the name of the respondent no.7 for settlement of the Ferry Service, as his bid was the highest.

14. Ms. M.D. Borah further submits that the re-tender notice dated 22.05.2023 is for settlement of the Ferry Service for a term of 2 years, which is to expire on 31.03.2024. Further, the State respondents have also published a new tender for settlement of the Ferry Service from 01.04.2024 to 31.03.2026. She accordingly submits that if any settlement of the Ferry Service is to be made, the same should only be for the remaining period of the 2 year term, i.e., till 31.03.2024.

15. I have heard the learned counsels for the parties.

16. As can be seen from the pleadings and the submissions made by the counsels for the parties, a tender notice dated 28.06.2022 had been invited for settling the Ferry Service for a period of 2 years. However, the same was cancelled and a re-tender notice dated 22.05.2023 was issued. The Technical

Bid Committee found that there was only one surviving valid tenderer out of the four bidders, vide it's meeting minutes dated 17.06.2023, i.e. the petitioner, which is as follows :

<u>Name of bidders</u>	<u>Documents Submitted/Not submitted</u>
a) Abdul Wahab (P)	All documents submitted as per NIT.
b) Giasuddin (R.8)	Failed to submit experience certificate as per NIT.
c) Jamat Ali	Withdrawn his tender.
d) Sarat Hazarika (R.7)	Failed to submit proper Land Valuation certificate and proper Financial Soundness Certificate.

17. The State respondents thereafter took a decision to issue a third tender notice, without taking a decision on the re-tender notice dated 22.05.2023, vide tender notice dated 05.08.2023. The same was put to challenge in WP(C) No.4760/2023. WP(C) No.4760/2023 was disposed of vide judgment dated 11.10.2023, by setting aside the 3rd tender notice dated 05.08.2023 and directing the State respondents to settle the Ferry Service in terms of the re-tender notice dated 22.05.2023. Further, the proceedings were to start from the Technical Bid Evaluation stage.

18. Pursuant to the judgment dated 11.10.2023 passed in WP(C) No.4760/2023, the minutes of the Tender Committee held on 31.10.2023 and 10.11.2023, while revisiting the tender documents of the tenderers pursuant to the re-tender notice dated 22.05.2023, decided to accept the tenders of the petitioner Abdul Wahab, Giasuddin (respondent no.8) and Sarat Hazarika

(respondent no.7) and reject the tender of Jamat Ali.

19. As can be seen from the earlier Tender Committee meeting held on 17.06.2023, the technical bids of the respondent nos.7 & 8 had been disqualified. However, on the same set of documents pertaining to the re-tender notice dated 22.05.2023, the Technical Committee in their meeting minutes dated 31.10.2023 and 10.11.2023, have found the technical bids of the respondent nos.7 & 8 as responsive, i.e., they have qualified the Technical Bid Evaluation stage.

20. In the meeting minutes of the Tender Committee held on 17.06.2023, the bid of the respondent no.8 had been disqualified as he had failed to submit Experience Certificate as per Clause 10(b) of the tender notice, which states as follows :

*“10(b) **Copies of Experience Certificate** issued by the D.C./A.D.C./SDO(S)/S.D.O (Civil) must be submitted along with the tender. In case of new tenderer, a certificate about the financial soundness of the tenderer from D.C./A.D.C./SDO Sadar/S.D.O (Civil) of District/Sub-Division or any nationalized Bank should be enclosed”*

21. A perusal of Clause 10(b) of the tender notice dated 28.06.2022 clearly shows that the Experience Certificate is an essential document which must be submitted along with the tender. There is nothing to show that the State respondents had made any deviation from the requirements of submitting the Experience Certificate along with the tender in respect of Clause 10(b). In that view of the matter, the Tender Committee could not have accepted/qualified the tender documents of the respondent no.8, in the absence of the respondent

no.8 submitting his Experience Certificate in terms of clause 10(b) of the tender notice. Accordingly, this Court is of the view that the decision of the Tender Committee in accepting the tender of the respondent no.8 is arbitrary and has to be set aside. The tender document/bid of the respondent no.8 is accordingly held to be disqualified, for not having submitted the essential document, i.e. Experience Certificate, along with his tender.

22. The tender document of the respondent no.7 had been disqualified by the Tender Committee in its earlier meeting minutes dated 17.06.2023 on two grounds, i.e. (1) failure to submit proper Land Valuation Certificate and (2) failure of submit proper Financial Soundness Certificate.

23. The respondent no.7 had submitted the Land Valuation Certificated issued by the Circle Officer, while it had to be issued by the Deputy Commissioner/ Additonal Deputy Commissioner/ Sadar Sub-Divisional Officer or the Sub-Divisional Officer (Civil) in terms of the tender notice. The concerned Deputy Commissioner had however stated that the Land Valuation Certificate issued by the Circle Officer was proper and as such the Tender Committee had accepted the Land Valuation Certificate issued by the Circle Officer. The acceptance of the said Land Valuation Certificate by the Tender Committee in its meeting minutes dated 10.11.2023, does not suffer from any infirmity, as this Court had allowed that Tender Committee to re-vist the bids of the bidders, especially the Land Valuation Certificate of the respondent no.7, vide the judgment and order passed in WP(C) No.4760/2023. However, with regard to the failure of the respondent no.7 to submit proper Financial Soundness Certificate, this Court fails to understand as to how the Tender Committee could have accepted the

Financial Soundness Certificate submitted by the respondent no.7, when this Court in the order dated 11.12.2023 passed in WP(C) No.6954/2023, has held that the contents of the certificate annexed as Annexure-7, which is the Financial Soundness Certificate, cannot be a Certificate of Financial Soundness.

24. The Financial Soundness Certificate of the respondent no.7 is re-produced below as follows :

“To whom it may concern

This is to certify that Mr. Sarat Hazarika, of Vill Upper Kurua, PO Kurua, PS Sipajhar, District Darrang (Assam) is a customer of our branch maintaining his saving account bearing no.7060026004223”

25. The relevant portion of the order dated 11.12.2023 passed in WP(C) No.6954/2023 is as follows :

“.....

This Court has taken into consideration the directions dated 11.10.2023 passed by this Court in the earlier writ petition being WP(C)/4760/2023. Prima facie, even ignoring or overlooking the aspect as to whether the bank in question would come within the definition of a Nationalized Bank, the contents of the certificate annexed as Annexure-7 cannot mean to be a Certificate of Financial Soundness.

.....”

26. The observations made by this Court that the Financial Soundness Certificate submitted by the respondent no.7 cannot be said to be a certificate of financial soundness has not been put to challenge by the petitioner and as such, the observation has attained finality as on date. Consequently, the tender

document of the respondent no.7 cannot qualify/pass the Technical Bid Evaluation stage, as the same is in conflict with Clause 10(b) of the tender notice dated 28.06.2022. As such, the only remaining valid tenderer is the petitioner.

27. The bids filed by the various tenderers are as follows :

<u>Name of bidder</u>	<u>offered amount</u>
a) Sarat Hazarika (R.7)	Rs.18,50,562.00
b) Giasuddin (R.8)	Rs.9,50,650.00
c) Abdul Wahab (P)	Rs.6,50,500.00

28. No doubt, the petitioner has offered the lowest bid. However, as he is the only valid bidder still in the fray, the State respondents would have to settle the Ferry Service with the petitioner in terms of the judgment passed by this Court in WP(C) No.4760/2023. The above being said, as the period of settlement of the Ferry Service is going to end on 31.03.2024, the State respondents are directed to settle the Ferry Service with the petitioner for the remaining period immediately. It is needless to add that in terms of Clause 14 of the tender notice dated 28.06.2022, the period of the term of operation of the Ferry will commence from the date of handing over of the Ferry to the lessee, till the end of the financial year unless mentioned otherwise in the settlement order.

28. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant